

Commentary: District Court Cases

Jacquety v. Baptista, 2020 WL 5946562 (S.D.N.Y. Oct. 7, 2020)

Other District Court Cases

Leon v. Ruiz,
No. MO:19-CV-00293-RCG, 2020 U.S.
Dist. LEXIS 43758 (W.D. Tex. Mar. 13,
2020)

Pope v. Lunday,
No. CIV-19-01122-PRW, 2019 WL
711615 (W.D. Okla. Dec. 23, 2019)

Cunningham v. Cunningham,
237 F. Supp. 3d 1246 (M.D. Fla. 2017)

Marquez v. Castillo,
72 F. Supp. 3d 1280 (M.D. Fla. 2014)

Jurisdiction | Standing | Redressability

A father filed a petition for return of his child against both the child's mother and her romantic partner, alleging that her partner assisted with the abduction. The partner moved for summary judgment on the grounds that he was not related to child and had no custody or control over the child, and accordingly could not respond to or comply with an order that the child be returned. The district court denied summary judgment, holding that he was properly joined as a respondent.

Holdings

The International Child Abductions Remedies Act (ICARA) does not require a respondent to be related to or have legal authority over a child. A person who assists in the abduction of a child by planning or supporting the abduction, or who assists in concealing the child, is properly named as a respondent. Such persons are also potentially liable for reimbursement of the petitioner's fees and costs.

Facts

A father petitioned for the return of his child to Casablanca, Morocco, after the mother allegedly feigned taking the child to Switzerland for a family visit, but ultimately arranged for herself and the child to travel to New York. In addition to naming the mother in his petition for return, the father also named her friend Wadghiri, claiming that the two were romantically involved and that Wadghiri had planned the mother's removal of the child. The father alleged that Wadghiri had helped the mother draft a letter to send to the father which made what he claimed were false allegations of abuse, had helped plan transportation for the mother and child to New York, had obtained counsel for the mother, and had assisted with the child's abduction. After arriving in New York, the mother and child lived with Wadghiri.

Wadghiri wrote to the court, arguing inter alia that he was improperly named in the Hague petition because he was not a relative or custodial parent of the child and could not comply with an order for return because he had no control or legal authority over the child. The district court construed Wadghiri's letter as a motion for summary judgment and denied the motion.

Discussion

ICARA broadly defines a respondent in a Hague Convention case as “any person against whose interests a petition is filed in court . . . which seeks relief under the Convention.”¹ In its decision, the court noted the references to the broad application of the term *respondent* in both the Pérez-Vera explanatory report² and in a report of the Special Commission of the Hague Conference,³ both of which indicate that persons other than parents could be subject to proceedings under the 1980 Convention.

The district court found that the father had standing to assert the court’s jurisdiction over Wadghiri, focusing on redressability, which requires a showing that a favorable decision is likely to redress the injury claimed. The court relied on a Fifth Circuit holding in *Sanchez v. R.G.L.*,⁴ in which the court approved naming the director of a foster care agency as a respondent because the agency knew where the children were located and had authority to direct the children’s placement in foster care. The court also cited *Litowchak v. Litowchak*,⁵ in which a Vermont district court ruled that the joining of the children’s maternal grandfather as a respondent was appropriate because of his role in the abduction, including the purchase of plane tickets, contact with the petitioner’s employer to seek reimbursement for the children’s expenses, provision of housing for the mother and children, and participation in concealing the children’s location.

The district court also noted, in regard to redressability, that while a judgment against Wadghiri might not completely remedy the harm, it could potentially lessen the injury. Wadghiri had knowledge of the child’s whereabouts, could play a role in the child’s return, and could be held responsible for payment of the father’s fees and costs.⁶

1. 22 U.S.C.A. §9002(6) provides that “the term ‘respondent’ means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention.”

2. See Elisa Pérez-Vera, Explanatory Report: Hague Conference on Private International Law, in 3 Acts and Documents of the Fourteenth Session, Child Abduction (1982) [hereinafter Pérez-Vera Report]. The Pérez-Vera Report is the official commentary of the reporter to the proceedings leading to the adoption of the 1980 Hague Convention by the Hague Conference on Private International Law.

3. Elisa Pérez-Vera, Report of the Special Commission: Hague Conference on Private International Law, Acts and Documents of the Fourteenth Session, Child Abduction (1982).

4. 761 F.3d 495 (5th Cir. 2014).

5. No. 2:15-cv-185, 2015 U.S. Dist. LEXIS 157117 (D. Vt. Nov. 20, 2015).

6. *Id.* at *7.